IIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1378 of 2007

Muniappan .. Petitioner

Vs.

1. The State of Tamil Nadu
   rep. by its Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai-600 009.

2. The Commissioner of Police
   Chennai Police. .. Respondents

Petition filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.V.Perarasu
For Respondents: Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the petitioner Muniappan, son of Ramalingam, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the petitioner has come forward with the present petition seeking a writ of habeas corpus to call for the records pertaining to the detention order passed against

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the detenu by the second respondent in Memo No.277/BDFGISSV/2007, dated 30.6.2007, set aside the same and to direct the respondents to produce him, who is now detained at Central Prison, Puzhal, before this Court and set him at liberty.

3.1. The order of detention dated 30.6.2007 was passed on the basis of ground case in Crime No.472 of 2007 for alleged commission of offences under Sections 341, 336, 427, 392 and 506(2) IPC, complaint of which was lodged by one Palani. According to him, on 20.6.2007, while he was returning to his hotel, after purchasing provisions, the detenu, along with two others, wrongfully restrained him and threatened him to hand over money at the knife point. The detenu voluntarily inserted his hand into his shirt pocket and took Rs.125/-. Immediately, he raised hue and cry. When the nearby shopkeepers rushed to apprehend, the detenu and his associates picked up stones from the roadside and pelted the same against them, which got scattered all over the roadside. The public noticing the atrocious activities ran for safer places out of fear of danger to their lives and properties. Based on the complaint given by him a case, as stated above, was registered and the detenu was arrested.

3.2. Apart from the above, the detaining authority also took note of the two adverse cases pending against the detenu in Crime Nos.386/2007 and 433/2007 on the file of T1 Ambattur Police Station for the offence punishable under Sections 457 and 380, IPC.

3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

5. The main contention put forth by the learned counsel for the petitioner is that in the grounds of detention at paragraph 4, the detaining authority has observed that the detenu is in remand in connection with the ground case as well as two adverse cases, but in the Special report dated 27.6.2007, the sponsoring authority referred to only the ground case and therefore, the impugned order of detention is vitiated for non application of mind on the part of the detaining authority.

6. Concededly, in the order of detention, the detaining authority has observed that the detenu is in remand in connection with the ground case and two adverse cases and he has moved a bail application before the learned Judicial Magistrate, Ambattur and there is likelihood of his

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coming out on bail as in similar cases, bails are granted by the learned Judicial Magistrate, Ambattur, after a lapse of time. However, in the special report, the sponsoring authority had stated that the detenu is in remand only in connection with ground case. When there is such contradiction with respect to the remand of the detenu, the detaining authority ought to have sought for clarification from the sponsoring authority. Non appreciation of the said vital fact reflects the non application of mind on the part of the detaining authority.

7. Further, in the special report, the sponsoring authority had stated that the detenu was arrested on 20.6.2007 and was put in judicial remand till 4.7.2007 and the detenu had moved anticipatory bail application on 23.6.2007 and the same was adjourned to 2.7.2007. When the sponsoring authority had stated that the detenu is in remand from 20.6.2007, there is no possibility of the detenu moving an anticipatory bail application on 23.6.2007. The above discrepancy has also went unnoticed by the detaining authority.

For the reason aforesaid, the detention order is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other crime. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kpl

To

1. The Secretary to Government
   Prohibition and Excise Department
   Fort St.George, Chennai-9.

2. The Commissioner of Police
   Chennai-8.

3. The Superintendent
   Central Prison
   Puzhal, Chennai.

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4. The Public Prosecutor
   High Court, Madras.

5. The Joint Secretary to Government,
   Public (Law and Order) Department,
   Fort St.George, Chennai -9.

1 cc To Mr.P.Selvamozhi, Advocate, SR.73444.

HCP No.1378 of 2007.

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RVL 07.01.2008

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